

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**UNITED STATES OF AMERICA**

v.

**ARTURO HERRERA-GARCIA**

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Criminal Action No. **3:12-CR-067-L (01)**

**ORDER**

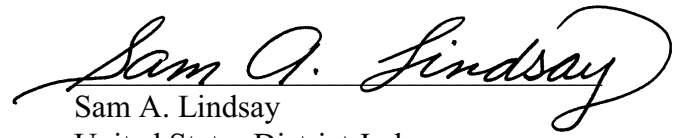
Defendant's "Unopposed Motion for Leave to Untimely [File] Notice of Appeal for Good Cause" (Doc. 42) and Notice of Appeal (Doc. 37) were referred to Magistrate Judge Renee Harris Toliver for findings and recommendation as to whether Defendant's untimely filing was due to excusable neglect or good cause. On January 17, 2013, the magistrate judge entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") recommending:

In light of the minimal delay involved in this case, the absence of prejudice, and the reason given for the delay namely that Defendant's "desire to appeal his case arose after his post-sentencing discussions with trial counsel" the Court concludes that Defendant has demonstrated excusable neglect and that an extension of time to appeal under Rule 4(b) (4) should be granted.

Doc. 44 at 2. Defendant did not file objections to the Report.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **grants** Defendant's "Unopposed Motion for Leave to Untimely [File] Notice of Appeal for Good Cause" and **deems** his appeal filed on October 30, 2012, to be **timely**. The Clerk of the Court is **directed** to return this case to the United States Court of Appeals for the Fifth Circuit.

**It is so ordered** this 30th day of January, 2013.

  
Sam A. Lindsay  
United States District Judge